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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,713	04/24/2001	Rodger H. Rast	EVRHeadset_01	6278

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RODGER H. RAST  
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GOLD RIVER, CA 95670

EXAMINER

GRIER, LAURA A

ART UNIT PAPER NUMBER

2644

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/841,713

Applicant(s)

RAST, RODGER H.

Examiner

Laura A Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,10,11,13,15,17 and 20 is/are rejected.
- 7) ☒ Claim(s) 2,7,9,12,14,16,18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/2/01</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 8/2/01 have been considered by the examiner.

***Drawings***

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because drawings, particularly figure 1, lacks a clear and precise illustration of the headphones. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-6, 11, 15 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 4 (dependent claims 5-6), the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
6. Regarding claim 11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
7. Regarding claim 15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
8. Claim 20 recites the limitation "the microphones" in lines 6 and 8, respectively. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Steelman, U. S. Patent No. 6101256.

Regarding claim 1, Steelman discloses a communication system comprising a helmet (14) to be worn about the head of a user and the includes an internal speaker (28a), which indicates an

earpiece and/or an earpiece within a headset, and the internal speaker reads an audio conversion device – (figure 1 and col. 2, lines 45-50 and 63-65); an external microphone (16a) – (col. 2, lines 50-52 and col. 3, lines 16-19), which reads on a microphone attached; the on/off switch (40c) constitutes as a selection device; and a signal coupler (32) which may include an amplifier – col. 2, lines 66-76 and col. 5, lines 10-26, 38-550, which indicates a signal conditioning circuit.

Regarding claim 3, Steelman discloses everything claimed as applied above (see claim 1). Steelman further discloses the on/off switch (40c) that constitutes as a selection device.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steelman in view of Kong et al., U. S. Patent No., 6782106.

Regarding claim 4, Steelman discloses everything claimed as applied above (see claim 1). However, Steelman fails to disclose inputs signals like music and audio communications.

Regarding the input signals, in a similar field of endeavor, Kong et al. (herein, Kong) discloses a sound producing or reproducing device (10), which obviously indicates music and audio communications.

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Steelman by implementing a sound producing or

reproducing device for the purpose of enable a wearer or user to listen to desired audio programs and sound of persons and other sounds that may be in same environment with the listener.

13. Claim 8, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kong in view of Inanaga et al, U. S. Patent No. 5276740.

Regarding claim 8, Kong discloses an apparatus and method for transmitting sound. Kong's disclosure comprises headphones (12), which indicates an earpiece and obviously an audio conversion device as evident by the use of the headphone; a microphone and a volume controller (col. 3, lines 16-30, 41-44 and 61-67), which indicates a signal processing circuit. Even though, Kong discloses an external microphone, Kong fails to disclose the microphone attached to the earpiece.

Regarding the microphone attached to the earpiece, in a similar field of endeavor, Inanaga et al. (herein, Inanaga) discloses an earphone device that includes and external microphone attached (17), thereto (abstract).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Kong by providing a microphone on the earpiece for the purpose of enable improving the efficiency of the headset's structure and advancement in communication when wearing a headset.

Regarding claim 10, Kong and Inanaga discloses everything claimed as applied above (see claim 8). Kong and Inanaga (Kong) discloses the use of the external volume control useable by the user, which indicates a manually operating selection device.

Regarding claim 13, Kong and Inanaga discloses everything claimed as applied above (see claim 8). Kong and Inanaga (Kong) discloses the volume levels being set in a manufactory (col. 3, lines 61-67), which indicates allow the user to select programmed sound selection criterion, therein.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kong and Steelman in view of Inanaga et al, U. S. Patent No. 5276740.

Regarding claim 17, Kong and Inanaga discloses everything claimed as applied above (see claim 8). Kong and Inanaga (Inanaga) noise cancellation circuitry (col. 6, lines 13-66).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Kong by providing noise cancellation circuitry for the purpose of lessening external noises while the user is listening to a desired reproduced sound.


15. Claims 2, 7, 9, 12, 14,<sup>16</sup> and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh N Tran can be reached on (703) 305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Laura A. Grier  
March 17, 2005